

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
STATESBORO DIVISION**

DEXTER SHAW,

Plaintiff,

v.

STATE OF GEORGIA; ROBERT
TOOLE; JOHN PAUL; and
MILTON SMITH,

Defendants.


CIVIL ACTION NO.: CV614-048

ORDER

Presently before the Court are Plaintiff's Objections to the Magistrate Judge's January 7, 2015, Report and Recommendation. (Doc. 34.) As laid out below, in his Objections, Plaintiff essentially concedes to the dismissal of the claims that the Magistrate recommended be dismissed. However, Plaintiff requests that these claims be dismissed without prejudice. For the reasons and in the manner set forth below, the Plaintiff's Objections are **SUSTAINED**.

Plaintiff, who is currently incarcerated at Valdosta State Prison in Valdosta, Georgia, filed a cause of action pursuant to 42 U.S.C. § 1983 and the Religious Land Use and Institutionalized Persons Act ("RLUIPA"), 42 U.S.C. §§ 2000cc, *et seq.*, to contest certain conditions of his confinement while he was housed at Georgia State Prison in Reidsville, Georgia. (Doc. 1.) The Magistrate Judge conducted the requisite frivolity review of Plaintiff's Complaint and recommended Plaintiff's Complaint be dismissed pursuant to 28 U.S.C. § 1915(g). (Doc. 5.) Plaintiff filed Objections to the Magistrate Judge's Report, a Motion to Amend, and an Amended Complaint. The Magistrate Judge granted Plaintiff's Motion to

Amend, recommended the dismissal of certain claims and Defendants, and directed the service of Plaintiff's Complaint, as amended, upon Defendants Toole, Paul, and Smith. (Docs. 11, 18, 20.) Plaintiff then filed another Motion to Amend. Based on this Motion, the Magistrate Judge: vacated his previous recommendation; recommended that Plaintiff's § 1983 claims against the State of Georgia, his monetary damages claims against the individual Defendants in their official capacities, and his monetary damages claims under the RLUIPA against Defendants be dismissed; recommended that Plaintiff's motions for temporary restraining order and preliminary injunction be denied; and ordered service of Plaintiff's Complaint and the amendments thereto upon Defendants Toole, Paul, Smith, and the State of Georgia. (Docs. 30, 31.)


In his Objections, Plaintiff asserts that he is not suing Defendants in their official capacities, he did not request injunctive relief, and he did not file suit against the State of Georgia. (Doc. 34, p. 1.) While the undersigned agrees with the Magistrate Judge's reading of Plaintiff's Complaint and the amendments to this Complaint, Plaintiff's claims against Defendants in their official capacities and his claims against the State of Georgia are **DISMISSED**, without prejudice, based on Plaintiff's contentions in his Objections.¹ In addition, based on Plaintiff's representations in his Objections, Plaintiff's injunctive relief claims, including his motion for a temporary restraining order and preliminary injunction, (doc. 3), are **DISMISSED** and Plaintiff's RLUIPA claims are **DISMISSED** in their entirety.² Finally, Plaintiff's claims against the State of Georgia for alleged violations of the RLUIPA are also

¹ The undersigned concurs with the Magistrate Judge's recommendation that Plaintiff's monetary damages claims against Defendants in their official capacities and his Section 1983 claims against the State of Georgia be dismissed. However, the Magistrate Judge's recommendation is that these claims be dismissed with prejudice. The undersigned makes this distinction solely based on the representations Plaintiff makes in his Objections.

² Plaintiff states that he did not seek injunctive relief in his Amended Complaint. The only remaining relief available on Plaintiff's RLUIPA claims is that for injunctive relief. (Doc. 31, p. 5.) Given Plaintiff's statement, his RLUIPA claims for relief are due to be dismissed.

DISMISSED, without prejudice, and the State of Georgia is **DISMISSED** as a named Defendant. Plaintiff's First and Eighth Amendment against Defendants Toole, Paul, and Smith in their individual capacities remain pending.

SO ORDERED, this 1 day of April, 2015.


B. AVANT EDENFIELD, JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA